

**IOWA DEPARTMENT OF NATURAL RESOURCES**  
**ADMINISTRATIVE CONSENT ORDER**

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**IN THE MATTER OF:**

City of Winterset  
Wastewater Facility No. 6-61-71-0-01

**ADMINISTRATIVE  
CONSENT ORDER  
NO. 2008-WW- 02**

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**TO:** The Honorable James C. Olsen  
124 W. Court Ave.  
Winterset, IA 50273

**I. SUMMARY**

This administrative consent order (Order) is entered into between the City of Winterset (City) and the Iowa Department of Natural Resources (Department). The City hereby agrees to pay a penalty of \$4,000.00 and in the future timely submit its National Pollution Discharge Elimination System (NPDES) permit renewal application. In the interest of avoiding litigation, the parties have agreed to the following provisions.

Any questions regarding this Order should be directed to:

**Relating to permit application:**

Tom Atkinson, Environmental Specialist

Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515/281-5054

**Relating to legal requirements:**

Carrie Schoenebaum  
Attorney at Law

Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515/281-0824

**II. JURISDICTION**

The parties hereby agree that this Order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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**III. STATEMENT OF FACTS**

The Department and the City hereby agree to the following statement of facts:

1. The City owns and operates a trickling filter waste water treatment facility (WWTF) located at Section 6, T 75 N, R 27 W, in Madison County, Iowa. This WWTF primarily treats domestic wastewater from the residents of the City and it discharges directly to the Middle River.
2. The City operates the WWTF pursuant to Iowa NPDES Permit No. 6-61-71-0-01 issued by the Department. This permit expires on November 07, 2007. The cover page of this permit stated that the City was required to file for renewal of the permit by May 11, 2007.
3. On December 8, 2006, the Department mailed the City a partially completed application for renewal of its NPDES permit. The City was informed that the application for renewal and NPDES fee were due to the Department by May 11, 2007.
4. On January 24, 2007, the Department called the City to make sure that the NPDES renewal application had been received and to discuss any questions that the City had about completing the application.
5. On June 15, 2007, the City was sent a Notice of Violation by certified mail for failure to renew its NPDES permit. This letter informed the City of its duty under its current permit and Iowa law to renew its NPDES permit.
6. On August 20, 2007, an incomplete NPDES permit renewal application was received by the Department from the City.
7. On August 21, 2007, a notice of an incomplete NPDES permit application was sent to the City. A copy of the application, with the incomplete portions highlighted, was sent along with this notice. The City was given until October 1, 2007, to submit a complete renewal application. To date the Department has not received a complete renewal application.
8. On November 6, 2007, an incomplete NPDES permit application was submitted to the Department.
9. On November 7, 2007, NPDES Permit No. 6-61-71-0-01 expired.
10. On November 16, 2007, a complete NPDES permit application was submitted to the Department.

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**IV. CONCLUSIONS OF LAW**

The Department and the City hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission to promulgate rules relating to the operation of waste disposal systems, including rules relating to monitoring and reporting requirements. The Commission has done so at 567 IAC chapters 60-64. Subrule 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. The terms of the City's NPDES permit require submission of a renewal NPDES permit application to the Department no later than May 11, 2007. The above stated facts show noncompliance with this provision.

2. 567 IAC 64.8(1) states that "[a]ny state NPDES permittee who wishes to continue to discharge after the expiration date of the permit shall file an application for reissuance of the permit at least 180 days prior to the expiration of the permit." The above stated facts show noncompliance with this provision.

3. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit from the Department. NPDES Permit No. 6-61-71-0-01 expired on November 7, 2007; therefore the City is now discharging without a permit.

**V. ORDER**

THEREFORE, the Department orders and the City hereby agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. In the future the City shall timely submit its renewal application for an NPDES permit;
2. The City shall pay a penalty in the amount of \$4,000.00 within 30 days after the Director signs this Order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. In addition, Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by

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rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with the assessment of penalties.

2. **Economic Benefit:** The City saved money by not allocating time to the submission and completion of its application for renewal of its NPDES permit. Therefore, \$100.00 is assessed for this factor.

3. **Gravity of the Violation:** A WWTF can not lawfully operate without an NPDES permit. Thus the City's failure to timely submit its NPDES permit renewal application is a serious violation. In addition, the City has been notified by the Department on numerous occasions of its duty to timely submit its renewal application. Therefore, \$2,400.00 is assessed for this factor.

4. **Culpability:** The City has been informed numerous times by the Department of its requirement to submit its NPDES renewal application. Moreover, the requirement is a condition of its current NPDES permit. Therefore, \$1,500.00 is assessed for this factor.

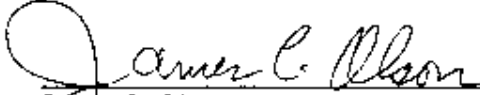
**VII. WAIVER OF APPEAL RIGHTS**

Iowa Code section 455B.175 and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. This Order is entered into knowingly by and with the consent of the City. By signature to this Order, all rights to appeal this Order are waived.

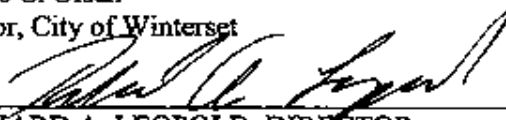
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VIII. NONCOMPLIANCE

Compliance with section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

  
James C. Olson  
Mayor, City of Winterset

Dated this 21 day of  
January, 2008, 2007.

  
RICHARD A. LEOPOLD, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 1 day of  
Feb., 2008.

NPDES File, Carrie Schoenebaum; Steve Williams, EPA, I.B.2.